IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3021 of 1998
with
SPECIAL CIVIL APPLICATION No 3160 of 1998
to
SPECIAL CIVIL APPLICATION NO 3176 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

KHANDUBHAI VASANJI DESAI
Versus
DY COMMISSIONER OF INCOME TAX SPECIAL RANGE 2

PRAKASHCHAND C. DESAI
VS
DY COMMISSIONER OF INCOME TAX SPECIAL RANGE 2

NARENDRA LAXMICHAND GAJIWALA
VS

DY. COMISSIONER OF INCOME TAX SPECIAL RANGE 2

DEVENDRA AJITRAI DESAI
VS
DY. COMMISSIONER OF INCOME TAX

GAURANG SUBHODRAI DESAI
VS
DY COMMISSIONER OF INCOME TAX

NAISHADRAI RAMCHAND DESAI
VS
DY COMMISSIONER OF INCOME TAX

KIRTIDA MAHESH DESAI
VS
DY COMMISSIONER OF INCOME TAX

REVANT MAHESH DESAI
VS
DY COMMISSIONER OF INCOME TAX

INDUBEN SUBHODRAI DESAI
VS
DY COMMISSIONER OF INCOME TAX

DAXA RAMCHANDRA DESAI
VS

DY COMMISSIONER OF INCOME TAX SPECIAL RANGE 2

KANISHA SHYAMBHAI LOKHANDWALA
VS

DY COMMISSIONER OF INCOME TAX

HARSHIDA DHIRUBHAI DESAI
VS
DY COMMISSIONER OF INCOME TAX

SANDHIYA RAJENDRA DESAI
VS
DY COMMISSIONER OF INCOME TAX

SABNAM AKBAR LOKHANDWALA
VS
DY COMMISSIONER OF INCOME TAX

USHABEN DAYABHAI JARIWALA
VS
DY COMMISSIONER OF INCOME TAX

HANSABEN AJITRAI DESAI
VS
DY COMMISSIONER OF INCOME TAX

NEELABEN BHIKHUBHAI DESAI
VS
DY COMMISSIONER OF INCOME TAX

Appearance:

Mr. K.H. Kaji for Petitioners in all the petitions.
Mr. Mihir Joshi for Mr. M.R. Bhatt for Respondent No. 1 in all the petitions.
Mr. Jayant Patel for Respondent No. 2 in all the petitions.

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE
Date of decision: 15/10/98

ORAL JUDGEMENT (Per R.K. Abichandani, J.)

This group of petitions seeks to challenge the constitutional validity of the provisions of Sec. 158BD of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') on the ground that they violate the fundamental rights of the petitioners guaranteed by Articles 14, 19(1)(g) and 21 of the Constitution of India and the impugned Notice dated 15.5.1998 and the Assessment Order dated 14.7.1998 passed pursuant thereto as having been passed without jurisdiction on that ground.

2. Earlier, by an order dated 6.5.1998, the Division Bench comprising of Hon'ble the Chief Justice and one of us (A.R. Dave, J.) had made an order directing all these matters to be posted for final disposal on 15.7.1998 in the Admission Board itself and that is how this group of maters came to be finally heard while they were on the admission board. Both the sides have referred to and argued on the basis of the record of Special Civil

Application No. 3021/98 which is the lead matter since all other matters of the group are identical.

3. The petitioners' case in these matters is that they were members of Dhawal Co-operative Housing Society which was registered under the provisions of the Gujarat Co-operative Housing Societies Act on 3.4.1978. The promoters of that society had entered into an agreement for purchase of a plot of land with one Lalitkumar T. Desai on 29.10.1975 for the purpose of putting up a building for providing residential accommodation to its members. Since the land was agricultural land, N.A. permission was required to be obtained by the seller. The necessary permission under Sec. 20 of the Urban Land (Ceiling & Regulation) Act, 1976, came to be obtained on 21.4.1990. In the meantime, the vendor had passed away on 22.8.1989 and ultimately the sale deed came to be executed by his heirs on the said date when permission was obtained, i.e., on 21.4.1990. Under the sale deed, the said land admeasuring 3383 square meters was sold for Rs. 67,660/-. Thereafter, the society entered into a development agreement on 11.8.1995 with one Madhavji Dhanjibhai Patel, who, as it transpired, was the sole owner of M/s. Dhruvin Enterprises. Under the terms of that agreement, it was stipulated that each of the original members of the society, who were 17 in number, had to pay Rs. 1,21,000/- as the cost of each flat to be allotted to such member. The said developer became entitled, under the agreement, to enrol new members for the said society with a written consent of the society after the original 17 members were handed over the possession of the flats which were to be constructed by him. Accordingly, after the building was constructed by the developer, Madhavji Dhanjibhai Patel, the society issued allotment letters on 3.4.1996 to the said original 17 members who are the petitioners before us in this group of petitions and the possession thereof was taken by them some time in February 1997. They had paid the stipulated amount of Rs. 1,21,000/- as the cost of construction of each flat as per the agreement. According to the petitioners, the society had thereafter, as per the agreement, inducted additional members on the request of the developer.

In the meantime, on 14.7.1996, the Income-tax Department initiated search and seizure proceedings against Madhavji Dhanjibhai Patel at his residence and office premises as well as in respect of bank lockers and assessment proceedings as per the special procedure laid down by Chapter XIV-B of the Act were initiated against him which were completed on 30.7.1997, assessing the

total undisclosed income at Rs. 5,65,66,211/-. In those proceedings against Madhavji, his statements were recorded at various stages and on 24.7.1997 it was recorded in Question-Answer form. In August 1997, the petitioners received notices dated 25.7.1997 from the respondent No. 1, the Deputy Commissioner of Income-tax, under Sec.158BD calling upon the petitioners to file returns of income including the undisclosed income in respect of which they were assessable for the block period of 10 years mentioned in Sec. 158B(a) of the Act. A similar notice was also issued in the name of the Association of Persons consisting of these 17 members. A copy of such notice is at Annexure-A to the petition. The petitioners had initially taken up a contention that the impugned notice which was issued to them by the Assessing Officer, the Respondent No.1, who was assessing the person subjected to raid, i.e., Madhavji, was without jurisdiction since the Assessing Officer having jurisdiction over the petitioners was different and not the first respondent. It was contended that the notice under Sec. 158BD could be issued only by the Assessing Officer having jurisdiction over the petitioners after the record is handed over to him. After the filing of these petitions fresh notices dated 15.5.1998 were issued by the respondent No.1 under Sec. 158BD in identical terms since he was, by then, vested with the jurisdiction to assess these petitioners. In view of this development, the petitioners amended the petitions by adding paragraph 18A in which it is now stated that the contention raised by the petitioners in para 16 of the petition, which was against the validity of the earlier notice issued on 25.7.1997 as per Annexure-A to the petition, did not now survive. The assessment orders have thereafter been made in case of all these petitioners on 14.7.1998. It is stated by the petitioners in the said amended para 18A that the merits of the assessment are not in issue in these petitions and will be contested before the appellate authorities in due course. The fresh notice dated 15.5.1998 and the assessment orders dated 14.7.1998 are however challenged as illegal and void on the ground that the provisions of Sec. 158BD are ultra vires Article 14, 19(1)(g) and 21 of the Constitution and, therefore, all action taken under that provision is equally without jurisdiction and void.

4. The respondents in their affidavit-in-reply have contended that the Assessing Officer who was given jurisdiction over these petitioners has issued a fresh notice to them. The earlier notice dated 28.7.1997 was issued before the block assessment proceedings in the

case of Shri Madhavji Dhanjibhai Patel were completed since the information regarding the Wards/Circles in which these 17 petitioners were being assessed was not forthcoming. As noted above, the petitioners have themselves stated by an amendment in the petition that the contentions which were raised by them in para 16 of the petition against the earlier notice dated 28.7.1997 did not now survive.

According to the respondents, Shri Madhavji Dhanjibhai Patel was the proprietor of M/s. Dhruvin Enterprises and not its partner. Though Madhavji was permitted to enrol new members for the said society with the written consent of the society, after the original 17 members were given possession of the flats, all the new members had already been enrolled as on 30.6.1995 as per the details filed during the course of the block assessment proceedings in the case of Shri Madhavji. It was held in the case of Shri Madhavji that the development agreement was a sham agreement because, in fact, the entire land belonging to the society had been transferred to Madhavji. It is stated in the said affidavit-in-reply that Madhavji for whom the search and seizure was made had stated on oath in his statement taken on 24.7.1997 in reply to Question No. 4 as under:

Qn. No. 4

"As per seized diary B-2 page No. 19 where the area of land and the rate per sq.yd. has been written by you, the total price of land was written as 329. After making the calculation for 17 flats of 2200 sq.ft. at the rate of Rs. 641 approx. the value was calculated at Rs. 237. The value of land to be paid after deducting 237 from 329 was calculated at 92. This reconcile the payment made to the 17 land owners."

Answer:

"As per document referred above, the total price of land was Rs. 3.29 crores. Against the above land price, 17 flats were delivered and, therefore, the payment was calculated at Rs. 2.37 crores in kind. Rs. 92 lakhs was paid alongwith the total expenditure on account of U.L.C. permission, Corporation permission, N.A. permission, land filing and other expenses the details of which has not been kept by me. It is

not possible for me to give the details of land filling expenses separately."

It is further stated in the affidavit-in-reply that in the Satisfaction Note recorded before the issuance of notice under Sec.158BD of the Act, it was noted that the land had been transferred to Shri Madhavji Dhanjibhai Patel for the consideration of Rs. 2.37 crores in kind and Rs. 92 lakhs in cash paid to the 17 persons who were the initial members of the co-operative society. According to the respondents, there was no question of the 17 members paying any amount for getting the said flats in addition to Rs. 1,21,000.00 per flat since these 17 members had transferred the land valuing Rs. 3.29 crores in consideration for 17 flats and Rs. 92 lakhs in cash. It is stated that the detailed satisfaction note was recorded on the basis of the documents and other material seized in the case of Shri Madhavji Dhanjibhai Patel for whom the search and seizure proceedings were initiated, before a notice under Sec. 158BD of the Act was issued on the petitioners. The reasons for issuance of the notice under Sec. 158BD have been annexed at Annexure-A to the affidavit-in-reply. For very detailed reasons which are given in the said satisfaction note for issuance of the notice under Sec. 158BD of the Act to these petitioners, the Assessing officer was satisfied that the agreement with the co-operative society was a sham agreement and the land had, in fact, been transferred to Shri Madhavji D. Patel for a consideration of Rs. 2.37 crores in kind and Rs. 92 lakhs in cash paid to 17 persons who were the initial members of the said society, that is, these petitioners. From the said satisfaction note, it appears that the Assessing Officer had reached his satisfaction for issuing notice under Sec. 158BD of the Act on these petitioners on the basis of the material which was seized during the search and the statements which were recorded under Sec. 132(4) of the Act.

In the affidavit-in-rejoinder filed by the petitioners, it is contended that, even assuming that the reasons recorded in the said satisfaction note are on the basis that Rs. 92 lakhs were paid to the original 17 members of the society, there was no basis for recording such reasons and that the reasons were recorded by the first respondent who was the Assessing Officer of the raided person Madhavji and not the Assessing Officer of the petitioners. It is contended that Sec. 158BD of the Act unreasonably bifurcated the functions of the Assessing Officer who is to record satisfaction and the

Assessing Officer who is required to issue notice under Sec. 158BD of the Act.

5. During the arguments, the Learned Counsel appearing for the petitioners has confined his challenge to the constitutionality of the provisions of Sec. 158BD of the Act on the ground that it violates the fundamental rights of the petitioners under Art. 14 of the Constitution inasmuch as it creates an invidious discrimination against the petitioners vis-a-vis similarly situated persons who can be dealt with under the provisions of sections 147 and 148 of the Act. Elaborating his argument, the Learned Counsel contended that the provisions of Sec. 158BD of the Act were really an interloper in providing for special assessment in search cases because the person other than the person with respect to whom the raid was made was never searched and no warrant of authorisation was issued nor any belief or information that any undisclosed income existed in his hands was reached under Sec. 132 of the Act. He contended that discrimination was writ large on the provisions of Sec. 158BD of the Act because they not only discriminated the persons who were not actually searched vis-a-vis the persons who could have been proceeded under sec. 147 read with sec. 148 of the Act for assessment or reassessment of any income that may have escaped assessment, but, they also discriminated such "other persons" vis-a-vis the person who was raided. It was submitted that the procedural discrimination against these "other persons" was hostile inasmuch as it entailed automatic reopening of the assessment of the block period of 10 years. Moreover, the time-limit, for completion of the assessment of such "other persons", was to commence only from the end of the month in which the notice was given to such other persons under sec. 158BD read with sec. 158BC(1) read with rule 12 of the Rules by which the assessee was required to fill in return in Form 2B prescribed thereunder unlike the time-limit fixed for the raided persons on the basis of the execution of the last authorisation. It was also contended that the method of computation of the undisclosed income was also specially devised and was more stringent than the normal method of assessment of total income; and finally, a flat rate of tax of 60% was prescribed in respect of total undisclosed income of the block period as provided by sec. 113 of the Act. It was contended that the distinction between persons other than the raided person whose undisclosed income is found in the course of the raid, and persons who could be proceeded against under Section 147 on the ground that their income had escaped assessment which would also include undisclosed income,

was not warranted, as they belonged to the same class. Moreover, as regards the raided party, the limitation was fixed at one year from the end of the month in which the last authorisation for search or requisition was executed while in the case of 'other person' referred to in sec. 158BD, the limitation provided was one year from the end of the month in which the notice under Chapter XIVB was served on such other person in the cases where search was initiated after 30.6.1995 but before 1.1.1997 as in the present case. It was contended that "other person" referred to in sec. 158BD of the Act was thus treated in a more disadvantageous manner than the raided person himself because a notice under Chapter XIVB may be served on such other person at any time. It was submitted that since there was no time prescribed in the Act for issuance of such notice to the "other person" referred to in sec. 158BD of the Act, it was not for the court to read any time-limit for issuance of such notice. It was submitted that virtually the time-limit stood lifted in case of such other persons while the time-limit of one year from the end of the month in which the last authorisation for search or requisition was executed operated to the benefit of the person who was searched. Thus, there was invidious discrimination between the raided person and the other person to whom the undisclosed income belonged as per the satisfaction of the Assessing Officer. The learned counsel relied upon the decisions of the Supreme Court in Suraj Mall Mohta and Anr. v. A.V. Visvanatha Sastri and Anr., reported in 26 ITR 1 and in S.C. Prashar and Anr. v. Vasantsen Dwarkadas and Ors., reported in 49 ITR 1, in support of his contentions.

6. The Learned Counsel appearing for the respondents contended that the said procedure for assessment of search cases had to be devised because of the inefficacy of the earlier provisions, which led to complications which are referred to in the memorandum of explanation of the new provisions. He referred to the Notes on Clauses and Memorandum explaining the provisions in the Finance Bill 1995 to point out the reasons which promoted the framing of the present scheme. He submitted that the persons to whom the undisclosed income detected in the search and seizure proceedings belonged form a separate class. This had to be done because earlier, while proceeding to make assessments and reassessments in respect of the undisclosed income which was estimated under sec. 132B, it became very difficult to relate the undisclosed income to any particular year and in the process of assessment where the facts remained clouded, the assessees were not too co-operative to help the

department in relating the undisclosed income to the particular years. It was submitted that a person whose undisclosed income is detected could be legitimately classified separately from the other persons in whose case the Assessing Officer can initiate proceedings under sec. 147 read with sec. 148 of the Act on a reason to believe that some income of a particular previous year had escaped assessment. In the latter case, there was no detected undisclosed income which was required to be related to particular previous years. It was further submitted that the Assessing Officer who was required to proceed against the raided person in respect of the undisclosed income found from his possession or control had no reason to wait any further after the material was transmitted to him under sec. 132(9A) of the Act and that is why the time-limit for assessment of such persons was fixed as one year from the end of the month in which the last authorisation was executed. It was argued that the fact that the undisclosed income belongs to some other person may come to light when the assessment proceedings against the raided person are commenced. Such other person to whom the undisclosed income belongs also stands on the same footing as the raided person to whom a part of the undisclosed income belongs. However, the commencement of the point of limitation in case of such other persons could not be the same as was provided for the raided persons and by the very nature of things the time-limit was made to commence in such cases from the date of receipt of the notice by such other person. It was argued that there was no warrant for any assumption that the notice to such other person could be issued at any time. He submitted that there were sufficient indications in the provisions of sec. 132 as well as Chapter XIVB to show that such notice was required to be issued soon after the Assessing Officer was satisfied that any undisclosed income belonged to such other person. If any notice is unduly delayed, that would be a lapse in executing the provisions of the Act for which the statutory provision cannot be struck down. He submitted that a wide range and flexibility is permissible to the legislature in fiscal statutes and the legislature need not be all embracing in making such provisions. He relied upon the decisions of the Supreme Court in R.K. Garg v. Union of India reported in 133 ITR 239, Sakhawant Ali v. State of Orissa reported in AIR 1955 SC 166,Twyfold Tea Co. v. The State of Kerala reported in AIR 1970 SC 1133, and State of Bihar v. S.K. Sinha reported in AIR 1995 SC 885 in support of his contentions. He also referred to the decisions of the Constitution Bench of the Supreme Court in A. Thangal Kunju Musaliar v. M. Venkatachalam Potti and Anr.

reported in 29 ITR 349 and ITO v. Murlidhar Bhagwandas reported in 52 ITR 335 in which the earlier decisions in Prashar v. Vasantsen (supra) and Suraj Mall Mohta (supra) were considered, and the decision of the Supreme Court in Hungerford Investment Trust Ltd. v. ITO and ors. reported in 231 ITR 175 in which ITO v. Murlidhar Bhagandas (supra) was explained and applied and the decision in Prashar v. Vasantsen (supra) was also considered.

7. Under the proviso to Sec. 4(1) of the said Act, it is laid down that, where, by virtue of any provision of the Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly. Therefore, the charging section clearly envisaged that there could be made a provision in the Act for charging income-tax in respect of the income of a period other than the previous year. But for this proviso under sec. 4(1), income-tax could be charged only for any assessment year in respect of the total income of the previous year. The block period contemplated by Chapter XIV-B would be a period other than the previous year within the meaning of the proviso to Sec. 4(1) of the Act and the income for such block period would be an income of a period other than the previous year as per that proviso.

8. Chapter XIV of the Act provides for the procedure for assessment and it contains Sec. 147 relating to income escaping assessment whereunder the Assessing Officer, having reason to believe that any income chargeable to tax has escaped assessment for any assessment year, can proceed to assess or reassess such income and also any other chargeable income which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under sec.147 for the assessment year concerned. Thus, the provision of sec. 147 enabled the Assessing Officer to tax income that has escaped assessment for any assessment year and was inapplicable to any assessment of income for a block period. A time-limit for issuance of notice under sec. 148 for the purpose of assessment, reassessment or recomputation is prescribed under sec. 149 of the Act and this time-limit extended upto 10 years from the end of the relevant assessment year depending upon the amount of income chargeable to tax which had escaped assessment. Such notice may be issued at any time if assessment, reassessment or recomputation was required to be made to give effect to any finding or direction contained in the order in appeal, reference or revision or by a Court, provided such assessment,

reassessment or recomputation was not time-barred when the order subject to appeal, revision or reference was made, as laid down in Sec. 150(2) of the Act. If assessment under sec. 143(3) or sec. 147 has already been made for the relevant assessment year, no notice under sec. 148 could be issued unless the officer of appropriate higher rank, as provided in sec. 151(1), was satisfied on reasons recorded that it is a fit case for issuance of such notice. Sec. 153 provides for time-limit for completion of assessments and reassessments and in sub-sec. (2) it is provided that no order shall be made under sec. 147 of assessment, reassessment or recomputation after the expiry of 2 years from the end of the financial year in which notice under sec. 148 of the Act was served. Thus, outer limit for assessment, reassessment or recomputation under sec. 147 of the Act was upto 10 years from the end of the relevant assessment year for the notice and within 2 years after the end of the financial year in which such notice under sec. 148 was given. We have set out the provisions relating to the time-limit when proceedings are taken under sec. 147 of the Act because in his attack against the provisions of sec. 158BD, the learned counsel for the petitioners laid much emphasis on the fact that the other persons who fall within the provisions of sec. 158BD were unduly discriminated against in the matter of time-limit for completion of block assessment as separately provided in respect of such other persons under sec. 158BE(2) of the Act.

9. Chapter XIV-B lays down special procedure for assessment of search cases. As noted above, it deals with assessment of a `block period' as defined in clause (a) of sec. 158B being a period of previous years relevant to ten assessment years preceding the previous year in which the search was conducted under sec. 132 or requisition made under sec. 132A of the Act and including the period upto the date of the commencement of the search in the previous year in which the search was conducted. In cases where a search is initiated under Sec. 132 or books of account, other documents or any assets are requisitioned under sec. 132A in the case of any person after 30th June 1995, the Assessing Officer is required to proceed to assess the undisclosed income in accordance with the provisions of Chapter XIV-B and the total undisclosed income relating to the block period has to be charged to tax at the rates specified in sec. 113 as the income of the block period irrespective of the previous year or years to which such income relates and irrespective of the fact whether regular assessment for

any one or more of the relevant assessment years is pending or not, as provided in sec. 158BA of the Act. "Undisclosed income" as defined by sec. 158B(b) includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions, whether such money, bullion, jewellery, valuable article, thing, entry in the books of account or other documents or transactions represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of the Act. Where the assessee proves to the satisfaction of the Assessing Officer that any part of the income referred to in sub-sec. (1) of sec. 158BA relates to an assessment year for which the previous year has not ended or the date of filing the return of income under sub-sec. (1) of sec. 139 for any previous year has not expired and such income or transactions relating to such income are recorded on or before the date of the search or requisition in the books of account or other documents maintained in the normal course relating to such previous years, the said income will not be included in the block period as provided in sub-sec. (3) of sec. 158BA of the Act. The computation of undisclosed income of the block period is to be done as provided in sec. 158BB of the Act on the basis of evidence found as a result of search or requisition of books of account or documents and such other materials or information as are available with the Assessing Officer. The burden of proving to the satisfaction of the Assessing Officer that any undisclosed income had already been disclosed in any return of income filed by the assessee before the commencement of search or of the requisition, as the case may be, is on the assessee as laid down by sub-sec. (3) of sec. 158BB of the Act. The procedure for block assessment is laid down in sec. 158BC of the Act and the provision clearly indicates that it will operate where any search has been conducted under sec. 132 or books of account, other documents or assets are requisitioned under sec. 132A in the case of any person. Section 158BG provides that the order of assessment for the block period shall be passed by an Assessing Officer not below the rank of an Assistant Commissioner or Deputy Commissioner or an Assistant Director or Deputy Director, as the case may be. The first step that such Assessing Officer is required to take under sec. 158BC in such cases is that of serving a notice to such person in whose case search has been conducted or books, documents or assets are requisitioned, requiring him to furnish a return in the prescribed form within such time not being less than 15 days where the search is initiated or books

of account etc. are requisitioned after 30th of June 1995 but before the 1st of January 1997 being the period in which the present cases fall. The return is to be filed in Form No. 2B prescribed under rule 12(1)(A) of the Rules framed under the said Act in which such person is required to set forth his total income including the undisclosed income for the block period. The Assessing Officer has then to proceed to determine the undisclosed income of the block period in the manner laid down in sec. 158BB and the provisions of sec. 142, sub-sec. (2) and (3) of sec. 143 and sec. 144 are made applicable to the extent that they may apply. On determination of the undisclosed income for the block period in accordance with Chapter XIV-B, the Assessing Officer has to pass an order of block assessment and determine the tax payable by such person on the basis of such assessment. Thus, the Assessing Officer in cases where such return has been filed in Form 2B if he considers it necessary or expedient to ensure that such person has not understated the undisclosed income, then he may call upon such person to produce evidence in support of his return as envisaged by sub-sec. (2) of sec. 142 of the Act. He can proceed under sub-sec. (3) to hear the evidence as may be produced and after taking into account all the relevant material which, he may gather during such inquiry, make an order under clause (c) of sec. 158BC of assessment determining the tax payable by such person on the basis of such assessment. The assets seized under sec. 132 or requisitioned under sec.132A are required to be retained to the extent necessary and the provisions of sec. 132B are made applicable subject to such modifications as may be necessary and the references to "regular assessment" or "reassessment" in sec. 132B is required to be construed as references to "block assessment" as provided in clause (d) of sec. 158BC of the Act.

10. Then follows the provision of sec. 158BD which is impugned in these petitions and therefore we reproduce the same hereunder:

"Undisclosed Income of any other person.

158BD. Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom documents or any assets were requisitioned under section 132A, then, the books of account, other documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer

shall proceed against such other person and the provisions of the Chapter shall apply accordingly."

This provision indicates that where the Assessing Officer, who is seized of the matter and has jurisdiction over the person other than the person with respect to whom search was made under sec. 132 or whose books of account or other documents or any assets were requisitioned under sec. 132A, shall proceed against such other person as per the provisions of Chapter XIV-B which would mean that on such satisfaction being reached that any undisclosed income belongs to such other person, he must proceed to serve a notice to such other person as per the provisions of sec. 158BC of the Act. If the Assessing Officer who is seized of the matter against the raided person reaches such satisfaction that any undisclosed income belongs to such other person over whom he has no jurisdiction, then, in that event, he has to transmit the material to the Assessing Officer having jurisdiction over such other person and in such cases the Assessing Officer who has jurisdiction will proceed against such other person by issuing the requisite notice contemplated by sec. 158BC of the Act.

The time-limit for completion of block assessment is provided by sec. 158BE and it is one year from the end of the month in which the last of the authorisations for search under sec. 132 or for requisition under sec. 132A was executed in cases where a search is initiated or books of account etc. requisitioned after the 30th of June, 1995, but before the 1st day of January, 1997. It will be noticed that the time-limit for completion of assessment provided in clause (a) of sec. 158BE(1) essentially relates to the assessment of the undisclosed income of the raided person because sub-sec. (2) of sec. 158BE specifically provides that in case of person other than the person with respect to whom search was made or books of account etc. requisitioned, the period of limitation for completion of block assessment would be one year from the end of the month in which the notice under Chapter XIV-B was served on such other person in cases where the search was initiated after 30th June 1995 but before 1st January, 1997.

11. It will be noticed from the provisions of Chapter XIV-B that the special procedure devised therein is required to be followed for assessment in search cases covered by the provisions of sec. 132 and 132A of the Act. Section 132(1) spells out the contingency in which authorisation can be issued by the high officials

designated therein for search and seizure where any such designated authority, that is, Director-General or Director, Chief Commissioner or Commissioner, Joint Director or Joint Commissioner as may be empowered by the Board has reason to believe, in consequence of information in his possession, that any person on whom summons was issued has omitted or failed to produce or cause to be produced books of account or other documents as required by such summons or notice or that any person to whom summons or notice has been or might be issued will not or would not produce any books of account or documents which will be useful or relevant to any proceeding under the Act or where any person is in possession of any money, bullion, jewellery or other valuable article or thing which represents either wholly or partly income or property which has not been or would not be disclosed for the purposes of the Act, then such authority may authorise any of the named officers to conduct search and seizure in the manner referred to in clauses (i) to (v) of sec. 132(1) of the Act. In the process of the exercise of this power of search and seizure, the authorised officer may serve an order on the owner or the person who is in immediate possession or control that he shall not remove, part with or otherwise deal with the asset except with the previous permission of the authorised officer as provided by the second proviso to sub-sec. (1) of sec. 132 of the Act. He may also, for the reasons other than those mentioned in the second proviso to sub-sec. (1) of sec. 132, serve an order on the owner or the person who is in immediate possession or control of the asset that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer as provided by sub-sec. (3) of sec. 132 of the Act. The authorised officer is empowered to examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion etc. as provided by sub-sec. (4) of sec. 132 of the Act. Sub-sec. (4A) of sec. 13 raises a presumption against the person who is found in the possession or control of such assets, books of account or documents etc. that they belong to such person. Then comes sub-sec. (5) of sec. 132, the parting stage of search and seizure cases initiated after 1st July, 1995 which are now required to be dealt with as per the special procedure for assessment of search cases in Chapter XIV-B of the Act. In cases where search was initiated prior to 1st July, 1995, the Income-tax Officer is required to proceed to estimate the undisclosed income in a summary manner to the best of his judgment on the basis of the material available with him and to calculate the amount of tax on such estimated income, determine the

amount of interest payable and penalty imposable and specify the amount that will be required to satisfy any existing liability under the Act for the purpose of retaining in his custody the assets or part thereof sufficient to specify the aggregate of such amounts and release the remaining portion. The assets retained under sub-sec. (5) of sec. 132 were to be dealt with in the manner provided in sec.132B of the Act which laid down that the amount of existing liability referred to in clause (iii) of sub-sec. (5) of sec. 132 and the amount of the liability determined on completion of regular assessment or reassessment for all the assessment years relevant to the previous years which the income referred to in clause (i) of that sub-section relates including any penalty or interest payable in connection with such assessment or reassessment, and in respect of which the assessee is in default or is deemed to be in default may be recovered out of such assets. This, however, did not preclude recovery of the amount of liabilities by any other mode laid down in the Act as provided by sub-sec. (2) of sec. 132B of the Act. It will thus be seen that prior to 1st July 1995 in search and seizure cases there was no special procedure for assessment and the undisclosed income was only required to be estimated and the tax and other liabilities determined for the purpose of retaining the custody of the assets mentioned therein which are seized and it is only when the assessments or reassessments was done as per the other provisions of the Act that these assets which were retained were liable to be adjusted towards the amount of the liability determined on such assessments or reassessments in respect of the relevant previous years to which the estimated undisclosed income related. It will be noted that as per sub-section (7) of sec. 132, if the ITO was satisfied that the seized assets or part thereof were held by the person from whose possession they were seized for or on behalf of any other person, he was required to proceed under sub-sec. (5) of sec. 132 against such other person and all the provisions of sec. 132 were made applicable accordingly. Sub-sec. (9A) of sec. 132 provided that where the authorised officer had no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c) of sub-sec. (1) of sec. 132, the books of account or other documents or assets seized under that sub-section were required to be handed over by the authorised officer to the Income Tax Officer having jurisdiction over such person within a period of 15 days of such seizure and thereupon the powers exercisable by the authorised officer under sub-sec. (8) or sub-sec. (9) of sec. 132 became exercisable by such ITO and these powers related to seeking approval of the higher

authorities for retention of the seized material beyond 180 days from the date of seizure and allowing the person from whose custody any books of account or documents were seized to make copies thereof.

12. We have in detail referred to the search and seizure provisions contained in sec. 132 to indicate the background in which the provisions of Chapter XIV-B start operating for making block assessment of persons with respect to whom search was initiated under sec. 132 or books etc. requisitioned under sec. 132A after 30.6.1995 and to whom the undisclosed income belonged as also persons other than to whom any of such undisclosed income belonged as per the satisfaction reached by the Assessing Officer. So far as the raided person is concerned the Assessing Officer is armed with the provisions of sub-sec. (4A) of sec. 132 which raises a presumption, albeit rebuttable, that such material found in the possession or control of any person belongs to such person. Therefore, in cases of the raided person this presumption would be the basis on which the Assessing Officer can proceed under sec. 158BC by serving a notice on such person to furnish a return in the prescribed Form 2B. In cases, however, where the presumption is rebutted at any stage or if it transpires at the threshold to the satisfaction of the Assessing Officer that any undisclosed income belongs to person other than the person with respect to whom the search was made or the books of account, documents or assets requisitioned, then it is that satisfaction which enjoins a duty on the Assessing Officer to proceed against such other person. Both the raided as well as such other person are to be proceeded against under Chapter XIV-B on the basis that the undisclosed income belongs to them and therefore they fall in the same category.

13. There can be no dispute about the proposition that a taxing statute which is beyond the legislative competence or which violates any of the fundamental rights guaranteed by Part III of the Constitution of India would be void. A taxing statute can be scrutinised on the anvil of Art. 14 of the Constitution like any other law. As held by the Supreme Court in K.T. Moopil Nair etc. v. State of Kerala and anr. reported in AIR 1961 SC 552, a taxing statute is not wholly immune from attack on the ground that it infringes the equality clause in Art. 14, though the courts are not concerned with the policy underlying a taxing statute or whether a particular tax could have been imposed in a different way or in a way that the court might think more just and

equitable. It was held that if the legislature has classified persons or properties into different categories which are subjected to different rates of taxation with reference to income or property, such a classification would not be open to to the attack of inequality on the ground that the total burden resulting from such a classification is unequal. Similarly, different kinds of property may be subjected to different rates of taxation, but so long as there is a rational basis for the classification, Art. 14 will not come in the way of such classification resulting in unequal burdens on different classes of properties.

In Balaji v. Income-tax Officer reported in AIR 1962 SC 123, the Supreme Court, in context of a challenge against the constitutional validity of sec. 16(3)(a)(i) of Income-tax Act,1922, holding that it did not contravene Art. 14 of the Constitution, reiterated that what Art. 14 prohibited was class legislation and not reasonable classification for the purpose of legislation. Two conditions were laid down for passing the test of permissible classification, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that the differentia must have rational relation to the object sought to be achieved by the statute in question. It was held that a combined and plain reading of the provisions of Art. 265 and Art. 13(1) made it abundantly clear that a law providing for levy and collection of tax which is inconsistent with any of the provisions of Part III of the Constitution is void.

In Khyerbari Tea Co. Ltd. and anr. v. State of Assam and others reported in AIR 1964 SC 925, while considering a challenge against the provisions of Assam Taxation (On Goods Carried by Road or on Inland Waterways) Act, the Supreme Court observed that, while it was true that validity of tax laws can be questioned in the light of the provisions of Articles 14, 19 and 301 of the Constitution, if the tax directly and immediately imposed restriction on the freedom of trade, the power conferred on the court to strike down a taxing statute if it contravenes the provisions of Arts. 14, 19 or 301 has to be exercised with circumspection, bearing in mind that the power of the State to levy taxes for the purpose of governance and for carrying out its welfare activities is a necessary attribute of sovereignty and in that sense it is a power of paramount character. However, where the court is satisfied that the impugned Act imposed unreasonable restrictions on the fundamental rights of

the citizens, conferred unbridled power on the appropriate authorities, introduced unconstitutional discrimination and in consequence, amounted to a colourable exercise of legislative power, such a taxing statute can properly be regarded as purely confiscatory and the power of the court can be legitimately invoked and exercised. It was further held that the legislature which is competent to levy a tax must inevitably be given full freedom to determine which articles should be taxed, in what manner and at what rate. The Supreme Court reiterated the principle that in examining constitutionality of a statute, it must be assumed that the legislature understands and appreciates the needs of the people and the laws it enacts are directed to problems which are made manifest by experience and that the elected representatives assembled in a legislature enact laws which they consider to be reasonable for the purposes for which they are enacted. Presumption is therefore in favour of the constitutionality of an enactment which is generally applicable in cases under Art. 14 of the Constitution. It was observed that under Art. 14 of the Constitution, the initial presumption of constitutionality may have a larger sway inasmuch as it may place the burden on the petitioner to show that the impugned law denied equality before the law, or equal protection of the laws.

In Union of India and anr. v. M/s. Parameshwaran Match Works etc. reported in AIR 1974 SC 2349 where the notification issued under rule 8(1) of the Central Excise Rules provided for concessional rate of duty on match boxes only to those manufacturers who filed declaration as required by the proviso before 4.9.1967, it was held that the choice of a date for granting concessional rate of duty was not violative of Art. 14. The Supreme Court held that the choice of a date as a basis of classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. This dictum was followed by the Supreme Court in D.G. Ghouse and Co. v. State of Kerala and others reported in AIR 1980 SC 271 in which it was held that it cannot be said with any justification that in choosing April 1,1973 as the date for the levy of the tax (which date was recommended by the Select Committee as the date from which the Act may be brought into force) the legislature acted unreasonably or that it was "wide off the reasonable mark".

In P.M. Ashwathanarayana Setty and others v. State of Karnataka and others reported in AIR 1989 SC

100, in context of the provisions of the Rajasthan Court Fees and Suits Valuation Act, the Supreme Court observed that though legislative measures dealing with economic regulation are not outside Art. 14 of the Constitution, it is well recognised that the State enjoys the widest latitude where measures of economic regulation are concerned. These measures for fiscal and economic regulation involve an evaluation of diverse and quite often conflicting economic criteria and adjustment and balancing of various conflicting social and economic values and interests. It is for the State to decide what economic and social policy it should pursue and what discriminations advance those social and economic policies. In view of the inherent complexity of these fiscal adjustments, courts give a larger discretion to the legislature in the matter of its preferences of economic and social policies and effectuate the chosen system in all possible and reasonable ways. If two or more methods of adjustments of an economic measure are available, the legislative preference in favour of one of them cannot be questioned on the ground of lack of legislative wisdom or that the method adopted is not the best or that there were better ways of adjusting the competing interests and claims. The legislature possesses the greatest freedom in such areas. It was observed that social and economic problems of a policy do not accord with pre-conceived stereotypes so as to be amenable to pre-determined solutions.

14. To meet with the manifold ways that the tax evasion may take place, the taxing statutes may have to devise different means to meet with different situations. While uniformity may be a virtue, it may fail to answer a given situation. When the situation warrants a special procedure to be adopted, the legislature is entirely within its domain to devise it to achieve the object of the law. Bringing to tax the income chargeable to tax is the paramount object of any taxing statute and for achieving such object it may prescribe a special procedure to more effectively deal with a given complex situation. In the present case, the past experience in respect of search cases showed that valuable time was lost in trying to relate the undisclosed incomes to different previous years under sec. 132B of the Act and that by the time search related assets were computed, the effect of search was considerably diluted. In this context it will be pertinent to refer to the Memorandum explaining the provisions of Chapter XIV-B which would show what weighed behind the making of these provisions for the purpose of block assessment of the undisclosed income in search cases.

"Searches conducted by the Income-tax Department are important means of unearthing black money. However, under the present scheme, valuable time is lost in trying to relate the undisclosed incomes to the different years. Tax evaders generally manage to divert the focus to procedural and legal issues and often invent new evidence to explain undisclosed income. By the time search-related assessments are completed, the effect of the search is considerably diluted. Legal battles continue for many years to decide which income is assessable in which assessment year. No finality is reached and the seized assets remain with the Department for a long time.

In order to make the procedure of assessment of search cases cost-effective, efficient and meaningful, it is proposed to introduce a new scheme of assessment of undisclosed income determined as a result of search under sec. 132 or requisition under sec. 132A."

Chapter XIV-B devises a special procedure for assessing the undisclosed income. The persons whose undisclosed income is already detected in search procedure are treated differently than others. Since their undisclosed income is detected, they are justifiably asked to relate it to the relevant years of the block period. The fact that undisclosed income of a person is detected in search proceedings is a valid reason for asking him to declare in the return whether he had any other undisclosed income. The block period is only of ten years which is not more onerous than the upper period of ten years for initiating escaped assessment proceedings by issuing notice under sec. 148 read with sec. 149 of the Act. The block period assessment was required to be done in such cases because relating the undisclosed income detected in search would have otherwise entailed reopening of the past assessments of several previous years over a period of time and an extensive search for the previous years to which the undisclosed income related. The assessee whose undisclosed income is detected and would therefore know to which year it belonged is now put under an obligation to disclose any other undisclosed income and to relate all his undisclosed income for the block period to the relevant previous years in the returns filed by him under Form 2B. In the inquiry under sec.143(3) of the Act which is made

applicable to the block assessment of undisclosed income, the Assessing Officer can go into the matter and detect the undisclosed income in respect of the block period in such search cases. This special procedure cannot be termed as an arbitrary discrimination against the persons whose undisclosed income is detected in the search proceedings. Treating the persons whose undisclosed income detected in search proceedings differently for the purpose of assessing their undisclosed income than others is therefore a classification based on an intelligible differentia having a reasonable nexus with the object of the law to effectively bring to tax the undisclosed income of the block period of such persons who did not and would not have disclosed it. Making of the special procedure for assessment of search cases by providing that there should be block assessment made in respect of the undisclosed income against the persons to whom it belongs therefore clearly passes the twin criteria of there being a valid classification on the basis of intelligible differentia between those for whom the special provisions are made and others who fall outside that class and a reasonable nexus of such classification with the object sought to be achieved by such statutory provisions.

15. The contention that there is discrimination between the raided person and the other person to whom any undisclosed income belongs because the latter is proceeded against simply on the satisfaction of the Assessing Officer that any undisclosed income detected in the search case belongs to him while the form er has the benefit of satisfaction arrived at by an officer of a higher rank under Section 132(1) is totally misconceived. The reason to believe contemplated by Section 132(1) is for the purpose of issuance of a warrant of authorisation which proceeds the detection of the undisclosed income and it enures for the entire search and seizure of the assets etc. irrespective of the fact whether they belong to the raided person or any other person. In other words, the competent authority empowering the raid is not directing its mind at all to ascertain whether the undisclosed income belongs to the raided person or any other person, but only wants the income or property in possession of any person, which has not been or would not be disclosed, to be searched and seized by the authorised officer. At the time when an authorisation is issued under sec. 132(1) by the designated authority on the basis of the information in his possession, he has only reason to believe that the material will not be produced by any person to whom summons is issued or might be issued or that the undisclosed income or property

mentioned in clause (c) which is in possession of any person has not been or would not be disclosed for the purposes of the said Act. It will be seen that at that stage there is no question of forming a reason to believe that any undisclosed income or property belongs to any particular person or that it belongs to the raided person. This is why a presumption is raised under sub-sec. (4A) of sec. 132 that if such material is found in the possession or control of any person in the course of a search, then it belongs to such person. The purpose of issuing authorisation under sec. 132(1)(c) is to detect the undisclosed income or property mentioned therein which would not be disclosed for the purposes of the Act. The person who is found in possession may not necessarily be the owner of such undisclosed income or property. It is only after the undisclosed income or property is detected to be in possession of any person that the question would arise to ascertain as to whether it belongs to the raided person or to any other person and that stage truly comes only after the issuance of the authorisation. It is on the strength of the presumption against the raided person who is found to be in possession or control of the material that he can be proceeded against for the purpose of assessment under Chapter XIV-B. However, if it is found that any of the undisclosed income belongs to someone else, which may happen at any point of time after the material is seized pursuant to the authorisation either when statement is recorded under sub-sec. (4) of sec. 132 or even thereafter when the raided person is required to file the return in Form 2B in cases which fall in Chapter XIV-B and the Assessing Officer may be satisfied that some part of the undisclosed income really does not belong to the raided person who is being proceeded against and that it belongs to some other person that the occasion arises for the first time to proceed against such other person. Thus, the satisfaction which the Assessing Officer is required to reach for proceeding against such other person as contemplated by sec. 158BD of the Act is entirely a different matter from the reason to believe that the designated authority is required to have on the basis of the information in his possession for the purpose of issuing an authorisation for search and seizure under sec. 132(1) of the Act. In fact, the search and seizure authorised under sec. 132(1) of the Act is valid for all the undisclosed income or other material which is searched and seized which would also include undisclosed income belonging to other persons. The authorisation under sec. 132(1) is not simply to search and seize undisclosed income or property belonging to the person who is in its possession or control, but in

respect of the income or property which has not been or would not be disclosed for the purposes of the Act which may be in possession of any person against whom the search is ordered and which undisclosed income or property may include undisclosed income or property belonging to persons other than the one who was in possession or control and against whom the authorisation was issued. It may even happen that after the search and seizure the entire undisclosed income or property which is seized is found to be belonging to some other person. Thus, the satisfaction for the purpose of issuance of authorisation under sec. 132(1) and the satisfaction for the purpose of proceeding against the other person to whom the undisclosed income belonged as per sec. 158BD of the Act are entirely distinct matters and such other person cannot make a grievance that in his case the satisfaction was to be reached by the Assessing Officer while in the case of the raided person it was to be reached by the higher designate authorities like Director-General or Director, Chief Commissioner or Commissioner, etc. There is therefore no question of any discrimination against the petitioners, who are such other persons, on the ground that satisfaction in their case was reached by the Assessing Officer and not by the higher authority, because, the nature of satisfaction reached against the petitioners under Section 158BD is entirely different from the reason to believe that the higher designated authority as per sec. 132(1) is required to have for the purpose of issuing an authorisation. The challenge against the provision of sec. 158BD of the Act being discriminatory on this ground and therefore violative of Art. 14 of the Constitution, therefore, fails.

16. For the purposes of Chapter XIV-B the Assessing Officer having jurisdiction over the person in whose case search is conducted under sec. 132, or books of account etc. requisitioned under sec. 132A, first comes into picture (if he himself was not the authorised officer) when the authorised officer who has no jurisdiction over the person referred to in clause (a), (b) and (c) of sub-sec. (1) of sec. 132, that is, the person for whom authorisation for raid was issued, hands over to him the assets or documents seized within 15 days of the seizure as provided in sec. 132(9A) of the Act to the ITO having jurisdiction over such persons. This means that, where the Assessing Officer who has jurisdiction over the raided person is different, the material will be transmitted to him for making block assessment of undisclosed income under Chapter XIV-B in cases where search is made after 30th June 1995. The said Assessing

Officer then proceeds under Section 158BC to issue notice to the person in whose case search was conducted requiring him to furnish return in the prescribed Form 2B. At the stage when he issues notice under sec. 158BC(1) he is already having evidence found as a result of search or requisition of books of account, documents etc. handed over to him and there is a presumption under sub-sec. (4A) of sec. 132 that the assets etc. belonged to the persons who was found in their possession or control. The presumption under sub-sec. (4A) of sec. 132 would enable the Assessing Officer to straightway proceed against the raided person by issuing notice under sec. 158BC(1) requiring him to file the return in Form 2B. If at any stage he is satisfied that any undisclosed income belongs to some other person, then, he must forthwith issue similar notice to such other person also. If, however, the fact that any undisclosed income belongs to other person transpires during the proceedings against the raided person, then, on reaching the requisite satisfaction that any such undisclosed income belongs to the other person, he must proceed to serve similar notice to that other person requiring him to file the return in Form 2B. If any of such other persons is not within his jurisdiction, then he has to transmit the relevant material to the Assessing Officer having jurisdiction over such other person who in turn will issue a notice under sec. 158BC(1) to him for filing the return for the block assessment of the undisclosed income belonging to such other person. The starting point of limitation in relation to any person in whose case the warrant of authorisation is issued, that is, a person falling in clauses (a), (b) or (c) of sub-sec. (1) of sec. 132, is the end of the month in which the authorisation for search or requisition was executed as per explanation 2 added with effect from 1st July 1998. Since the "other person" is not known when the authorisation for search or requisition is issued, on the basis of the presumption, the Assessing Officer has to straightway proceed against the person from whose possession or control the material was seized and against whom the authorisation was issued. The Assessing Officer in such case will have no justification to postpone the proceedings against such person who was raided and that is why the law provides for the starting point of limitation to be the end of the month in which the last authorisation was executed in respect of the raided person under the provisions of sec. 158BE(1) of the Act. In cases where the presumption stands rebutted in respect of any undisclosed income because the material available before the Assessing Officer satisfies him that any undisclosed income belongs to any person other than the person with respect to whom

the search was made or whose books of account, documents or assets were requisitioned, on such satisfaction being reached, the Assessing Officer will have to issue notice under sec. 158BC(1) on such other person and if he has no jurisdiction over such other person then to hand over the material to the Assessing Officer having jurisdiction over him who will proceed against such other person as provided by sec. 158BD of the Act under the provisions of Chapter XIV-B. The period of limitation for completion of the block assessment in the case of such other person was required to be computed from the end of the month in which a notice to such other person was given because the Assessing Officer who first received the material and could straightway proceed on the strength of presumption under sec. 132(4A) against the person found in possession or control of the material and for whom the last authorisation was executed, while proceeding with the block assessment against him may be satisfied that a part of the undisclosed income belongs to some other person for whom authorisation was not issued, that is, the person other than the one found in possession or control of the material seized. It is only when the Assessing Officer is satisfied that any undisclosed income belongs to any other person that the occasion to proceed against such other person for the block assessment of the undisclosed year belonging to him can arise. Necessarily, therefore, a different starting point of commencement of limitation for making the assessment of the block period in case of such other person was required to be fixed and the obvious starting point was the serving of the notice to such person after the requisite satisfaction was reached by the Assessing Officer that any undisclosed income belonged to such other person. Once the satisfaction under sec. 158BD is reached by the Assessing Officer, there would be no valid reason for him to delay the issuance of the notice which ought to be issued soon after the satisfaction is reached and if the Assessing Officer is different, he ought to immediately transmit the relevant material to the A.O having jurisdiction to enable him to proceed against such other person by issuing notice under sec. 158BC requiring him to file the return. Since the satisfaction that any undisclosed income belongs to any person other than the one with respect to whom search was made or books of account, documents or assets requisitioned, may, in many cases be reached after the Assessing Officer starts the proceedings under Section 158BC against the person with respect to whom the search was made, the shift of the commencement point of the limitation to the date of the notice, which could be issued to such other person only after it comes to light leading to the

satisfaction of the Assessing Officer that any undisclosed income belongs to him, was fully justified and it was germane to the object of making block assessment of undisclosed income of such other person who is now known as a person to whom that undisclosed income belongs. The Assessing Officer, once he reaches the requisite satisfaction, is bound to act swiftly to proceed against such other person as soon as may be in reasonable time. The speed and despatch with which he should act is writ large on the connected provisions of sec. 132(9A) of the Act under which the authorised officer who has no jurisdiction over the person referred to in clauses (a), (b) or (c) of sub-sec. (1) of sec. 132 has to hand over the books of account, documents and assets seized to the ITO having jurisdiction over such person within 15 days of such seizure and the Assessing Officer is required to serve a notice to such person under sec.158BC(1) requiring him to furnish return in the prescribed Form 2B and to complete the block assessment in one year from the end of the month in which the last authorisation for search or requisition was executed. Thus, the apprehension that a notice can be issued under sec. 158BD read with sec. 158BC(1) by the Assessing officer in the case of such "other person" at anytime is ill-founded. There is no lifting of the limitation period for making the assessment order which is one year and the starting point of limitation in cases falling under sec. 158BD by the very nature of things can be fixed only after the Assessing Officer is satisfied that any undisclosed income belongs to such other person and in cases where the Assessing Officer is different after the relevant material is transmitted to him. As soon as the Assessing Officer having jurisdiction receives the material in respect of the other person, he is in the same position as the Assessing Officer who forwarded it to him and is expected to immediately proceed to issue notice to that other person who falls in his jurisdiction. This extra time for computing limitation is warranted by the fact that the requisite satisfaction about any undisclosed income belonging to such other person may be reached after the commencement of the assessment proceedings against the raided person and consideration of the evidence forwarded by the authorised officer and information that may be available to the Assessing Officer and transmitted to the other Assessing Officer in cases where the other person falls in the jurisdiction of that other Assessing Officer which will necessarily take some time. This distinction prescribing a different starting point of limitation is, therefore, made on a rational basis and has a direct nexus with the object of assessing the undisclosed income sought to be

achieved by Chapter XIV-B. The challenge against the provisions of sec. 158BD on the ground that it treats equals, that is, the raided person and the other person whose undisclosed incomes are to be assessed, as unequals and thereby violates Art. 14 of the Constitution is, therefore, baseless.

17. The attack on the ground that the tax evaders constitute one class and therefore the more disadvantageous procedure under sec. 158BD against "other persons" than the one provided by sec. 147 is discriminatory and therefore violative of Art. 14 is equally misconceived. Under Chapter XIV-B a special procedure for block assessment is devised for cases where undisclosed income is detected by virtue of the search initiated under sec. 132, while sec. 147 operates when the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year which means such income is yet to be detected. The area of operation of Chapter XIV-B is to assess undisclosed income as a result of search and seizure by treating persons to whom the "undisclosed income" belongs as a separate class and providing for separate procedure for its assessment at a flat rate. The situation where search and seizure has yielded useful material showing the existence of undisclosed income is different from a situation where no undisclosed income is in fact detected but the Assessing Officer only has a reason to believe that some income has escaped assessment in a particular assessment year. When undisclosed income is detected a difficult question of relating it to the relevant previous year would arise with scant assistance from the assessee to whom the undisclosed income belongs and who would be in a position to know as to which relevant previous year it related. Under sec. 132B, such undisclosed income was required to be related to the relevant previous year in the assessment or reassessment proceedings by the Assessing Officer which required liability to be determined on completion of the assessments or reassessments for all the assessment years relevant to the previous years to which the undisclosed income related. This entailed a cumbersome exercise of reopening assessments of all the respective years to which the undisclosed income related. There were prolonged litigations and difficulties were experienced in relating the undisclosed income to the relevant years. Thus, there was a rational basis on which the search cases in which undisclosed income was detected were classified separately for the block assessment of the undisclosed income to be computed as per sec. 158BB of the Act on the basis of evidence found as a result of

search or requisition of books of account etc. and such other material or information as were available with the Assessing Officer. The proviso to sec. 4(1) of the Act clearly contemplated a provision in the Act requiring income-tax to be charged in respect of income of a period other than the previous year. Thus, income-tax could be charged in respect of the undisclosed income assessed for the block period. In cases where assessment or reassessment is done under sec. 147 when the Assessing Officer has reason to believe that income has escaped assessment for any assessment year, he is not confronted with a situation where undisclosed income is detected as in search cases and that undisclosed income is to be related to the relevant previous years. Under sec. 147 of the Act, the Assessing Officer, if he has a reason to believe that some income has escaped assessment for the assessment year concerned, issues notice under sec. 148 on the assessee to furnish a return in the prescribed form. The form prescribed for block assessment is different though it is the same for the one who is raided and the person other than the raided person to whom any undisclosed income belongs. The special procedure for block assessment of undisclosed income is thus devised on an intelligible differentia and a separate provision for assessment of undisclosed income of the block period has a direct and reasonable nexus with the object sought to be achieved by the provisions of Chapter XIV-B, namely, to provide a less cumbersome and more efficient machinery for assessing undisclosed income of the block period in search cases. The provision for a flat rate of tax was required to be made as a corollary to making assessment of such income for a block period and treating undisclosed income in such cases as a separate class of income. The challenge of the petitioner that sec. 158BD creates invidious discrimination amongst similarly situated persons and therefore violates Art. 14 is, therefore, wholly misconceived.

18. In Suraj Mall Mohta (supra), on which reliance was heavily placed on behalf of the petitioners, it was held that both sec. 34 of the Income-tax Act, 1922 and sub-sec. (4) of sec. 5 of the Taxation of Income (Investigation Commission) Act, 1947, deal with all persons who had similar characteristics and similar properties, that the procedure prescribed in the latter Act was substantially more prejudicial and more drastic to the assessee than the procedure under the former Act and, therefore, sub-sec. (4) of sec. 5 of the former Act in so far as it affected the persons proceeded against thereunder was void as offending the provisions of Art. 14 of the Constitution. On the analogy of this

case, the learned counsel for the petitioners contended that provision of sec. 158BD enabling a notice to be issued to other persons referred to in that provision in respect of the undisclosed income for making the block assessment without providing the limit of time for issuance of such notice makes a hostile discrimination against such other persons because the period of limitation with regard to the raided persons to whom any undisclosed income belonged and who were similarly situated operated from the end of the month in which the last authorisation was executed. We have held above that there was a valid justification for prescribing the point of commencement from the date of the notice for computing the limitation for making the assessment order in case of such other persons. By the very nature of things a different starting point of limitation was required to be prescribed for such other persons because the Assessing Officer may reach the requisite satisfaction that any income belonged to such other person at a point of time later than the date on which the last authorisation was executed and since there was no presumption of the nature which was available against the raided person found to be in possession or control, that the material seized from him belonged to him. It was only when such presumption stood rebutted and it appeared that any undisclosed income belonged to some other person that the question of fixing a starting point of limitation for making an assessment order against such other person could arise. There is no question of lifting of limitation in case of such other person and as held by us hereinabove there is no scope for any undue delay in proceeding under Chapter XIV-B against such other person once the Assessing Officer is satisfied that any undisclosed income belongs to such other person. If in any particular case a notice is unduly delayed, then that is a matter in which the validity of that notice can be considered but that surely will not invalidate the statutory provision which does not warrant any delay once the satisfaction is reached and enjoins a duty upon the Assessing Officer to immediately proceed against such other person under the provisions of Chapter XIV-B. Therefore, the decision in Suraj Mall Mohta (supra) cannot assist the petitioners.

As held by the Constitution Bench in A. Thangal Kunju Musaliar v. M. Venkatachalam Potti (supra), Suraj Mall Mohta's case (supra) and Shree Meenakshi Mill's case reported in 26 ITR 713 "did not directly pronounce upon the vires of sec. 5(1) of the Act in comparison with sec. 34(1) of the Income-tax Act, 1922 though the vires were the subject-matter of a direct challenge therein". Considering a provision similar to sec. 5(1) of the

Taxation of Income (Investigation Commission) Act, the Constitution Bench held that the object sought to be achieved by the impugned piece of legislation was quite definite and that was to catch substantial evaders of income-tax out of those who had made huge profits during the war period. It was also held that they form a class by themselves and had to be specially treated under the procedure laid down in the Act. Being a class by themselves, the procedure to which they were subjected during the course of investigation of their cases by the Commission was not at all discriminatory because such drastic procedure had reasonable nexus with the object sought to be achieved by the Act and therefore such a classification was within the constitutional limits.

In S.C. Prashar v. Vasantsen (supra), the Supreme Court was concerned with the second proviso to sec. 34(3) of the Act and it was held by majority that the provisions of second proviso to sec. 34(3) of the Income-tax Act, 1922 in so far as they authorised the assessment or reassessment of any person other than the assessee beyond the period of limitation specified in sec. 34 in consequence of or to give effect to a finding or direction given in an appeal, revision or reference arising out of proceedings in relation to the assessee, violated the provisions of Art. 14 of the Constitution of India and were invalid to that extent. In ITO v. Murlidhar Bhagwandas (supra), the Constitution Bench, while considering the provisions of second proviso to sec. 34(3) held that it only lifted the ban of limitation and did not enlarge the jurisdiction of the tribunals under the relevant sections and that the expressions "finding" and "direction" in the second proviso to sec. 34(3) meant respectively a finding necessary for giving relief in respect of the assessment for the year in question, and a direction which the appellate or revisional authority, as the case may be, was empowered to give under the sections mentioned in that proviso. It was held that a "finding", therefore, could only be that which was necessary for the disposal of an appeal in respect of an assessment of a particular year. It was however held that the expression "any person" in the second proviso to sec. 34(3) referred to one who would be liable to be assessed for the whole or part of the income that went into the assessment of the year under appeal or revision. It was therefore held that the second proviso to sec. 34(3) of the Act of 1922 did not save the time-limit prescribed under sec. 34(1) in respect of an escaped assessment of a year other than that which was the subject-matter of the appeal or revision and accordingly the notice issued under sec.

34(1)(a) of the Act of 1922 was barred by limitation and was not saved by the second proviso to sec. 34(3) of that Act. In Hungerford Investment Trust Ltd. v. ITO reported in 231 ITR 175 the Supreme Court, while considering the second proviso to sub-sec. (3) of sec. 34 of the Act of 1922, held that it lifted the bar of limitation when, inter alia, an assessment or reassessment is made on an assessee or any person in consequence of or to give effect to any finding or direction contained in an order under sec. 31 of that Act. If the person against whom notices are issued under sec. 34 of the Act of 1922, pursuant to a direction given by the Appellate Assistant Commissioner under sec. 31, is a person intimately connected with the original assessee, the period of limitation will not apply to a notice issued against him under sec. 34. He would be covered by the phrase "assessee or any other person" under the second proviso to sec. 34(3). Whether the person is so connected will depend on the facts of each case. It was held that the only reason why the words "any person" are read down to exclude total strangers is to prevent infringement of Art. 14 of the Constitution of India. Thus, total strangers and others against whom no directions were given and who could have been proceeded against in the normal way were in the same class. In the present petitions, in the case of the petitioners, pursuant to search and seizure proceedings, undisclosed income belonging to them was detected and as held above, they constituted a separate class from others in whose case no such undisclosed income was detected. Therefore, the decision of the Supreme Court in S.C. Prashar and Anr. (supra) can hardly assist the petitioners.

19. We have, for the reasons given hereinabove, held that the special procedure for block assessment of undisclosed income has been prescribed for valid reasons and that the classification of the persons to whom the undisclosed income belonged in such cases for the purpose of block assessment was based on an intelligible differentia between this class of persons and others in whose case no such undisclosed income was detected in any search case. This classification, as held by us above, has a reasonable nexus with the object of the law of providing an efficient and smooth machinery for bringing to tax the undisclosed income for a block period which was warranted by the proviso to sec. 4(1) of the Act, and, to meet with the difficulties which were experienced in relating the undisclosed income which was detected to the previous years to which it belonged. We, therefore, find no merit in the challenge against the constitutional

validity of sec. 158BD of the Act on the ground that it violates the right to equality guaranteed by Art. 14 of the Constitution of India.

20. The learned counsel has not canvassed any contention against the impugned provision of Section 158BD on the ground that they violate the fundamental rights of the petitioners guaranteed by Articles 19(1)(g) and 21 of the Constitution. Since, however, the contentions remain in the petitions, we would prefer to briefly deal with them as they were not expressly given up. Article 19(1)(g) guarantees to all citizens the fundamental right to practise any profession, or to carry on any occupation, trade or business. The impugned provision of sec. 158BD does not affect the fundamental right of the petitioners to carry on any profession, occupation, trade or business. It does not in any way regulate any profession, occupation, trade or business. In pith and substance, it is not a provision regulating any profession, occupation, trade or busiess and it is a provision enabling the Assessing Officer to adopt the special procedure for assessment of the undisclosed income relating to the block period, detected in search cases. The provision is within the legislative competence of the parliament and, as we have held above, does not violate the right to equality guaranteed by Art. 14 of the Constitution. The fixed rate of tax provided by sec. 113 applicable to such cases takes care of penalties and interest which cannot be imposed if the undisclosed income is duly returned by the assessee. Therefore, even from that angle, the impugned provision cannot be said to be affecting any fundamental right of the petitioners to carry on any occupation, trade or business. In any event, the provision cannot be assailed as being unreasonable because the legislature has, for valid reason, devised the special procedure for assessing the undisclosed income for a block period in search cases.

21. The challenge on the ground that the impugned provision violates Art. 21 of the Constitution which guarantees that no person shall be deprived of his life or personal liberty except according to the procedure established by law is equally misconceived. There is no question of the impugned provision depriving a person of his life or personal liberty. It is only a taxing provision which takes care of bringing to tax the undisclosed income for a block period in search cases which provisions were envisaged even in the proviso to sec. 4(1) of the said Act under which, where, by virtue of any provision of the Act, income-tax is to be charged

in respect of the income of a period other than the previous year, income-tax shall be charged accordingly. Even extending the meaning of the word "life" to the extreme to which the petitioners would like it to be extended for the purpose, it is clear that an appropriate procedure has been provided for the purpose of computing undisclosed income and after giving an adequate opportunity to the assessees make an assessment of the undisclosed income of the block period in search cases. The challenge against the impugned provision on the ground that it violates Art. 21 of the Constitution is, therefore, misconceived.

22. In view of what we have stated above, there is no merit in these petitions and they are rejected with no order as to costs.

(Hariharan)